

On page 2 through 6 of the Office Action, Claims 1 through 12, 15, 20, 21, 26, 35 through 46 and 49 are rejected under 35 U.S.C. §102(b) as being anticipated by Kunzle (U.S. Patent Publication 2002/0023051). On pages 6 through 11 of the Office Action, the Examiner has rejected Claims 13, 14, 16 through 19, 32, 33, 47, 48, 50, 51, 52 and 53.

#### Instant Application

Before turning to the substance of the Non-Final Rejection, a brief review of the invention is helpful:

The present invention advantageously provides a method and system that compares currently available mortgage, home equity and vehicle loans and recommends the loan or loans with the lowest cost over the time period the user wants to consider. A user is prompted for certain loan information such as the purpose of the loan, whether the user currently owns a home, and other financial information such as whether the user has existing loans and what the user's preferred savings scenario, or goal, would be. The method and system then uses real-time credit-based rates and actual underwriting rules to determine the lowest cost loans for which a user qualifies.

Application at page 3.

In order to perform the function of recommending loans to a consumer, the system considers user specific information input by the consumer as well as external sources of information. Thus:

The present invention receives these inputs and seeks to find the lowest cost loan(s) using the goals the user requested. If the user chooses to "Minimize total payments", the system seeks to provide a low monthly payment, but also considers the closing costs associated with the loan and mortgage insurance. If the user chooses to "Minimize after-tax interest costs", the system compares the after-tax interest plus closing costs and mortgage insurance to provide users with the loan that will minimize non-principal payments.

Application at pages 3-4. To accomplish the goals of providing loan recommendations tailored to individual consumer needs, the system incorporates different functionalities:

The present invention incorporates a real-time rate search using the user's credit score or estimated credit history, as well as other qualifying underwriting criteria such as minimum and maximum loan amounts and loan-to-value ratios, property type, use and property or transaction location. It then uses all this information to calculate and compare the monthly payments and interest costs of every qualifying loan and suggest the optimal loan option(s) and loan(s) to the user.

Application at page 4. Furthermore, the invention employs a system of prompts to elicit use specific information from the user relevant to the recommendation process. Therefore the system can prompt for user specific information that would be necessary in forming a recommendation:

The user is prompted to enter loan-specific details such as the amount of the loan requested, the estimated property value, in what manner the property is going to be used, i.e. primary residence, a second or vacation home, or as an investment, and the state where the home is going to be located.

Application at page 14. If, for example, the consumer is applying for the loan to purchase an investment property:

[T]he user is prompted to indicate what their expected rate of return is on the user's investment. For example, the user is asked whether they want the rate of return to be considered in the calculation, whether to use the current inflation rate or to use the historic average stock market return in the calculation.

Application at Page 14-15. The system has the capability to utilize such various inputs in formulating loan recommendations to users and "[a]ll of the user's initial input factors are initially used in calculating the optimal loan option", Application at page 15, although some inputs may ultimately not be used in making a final recommendation if, for example, the inputs are irrelevant to the consideration.

The system of the invention factors in these various inputs and makes optimal loan recommendations based on their application:

In each scenario, information regarding a particular user is received by server 11 via communications network 22, and the information processed by server 11 utilizing information stored in local database 16 and/or remote database 20, and responsive loan-related information is displayed on the user's terminal 24. This responsive information informs the user of the best possible loan currently available, based on the user's financial goals, present financial status, as well as other underwriting factors mentioned above. This is performed by comparing the user's input against the underwriting factors to identify all the loans for which the user could qualify. If the user's goal is to minimize total payments, the system will select the loan that has the lowest total combination of monthly payments, closing costs and mortgage insurance (where relevant) over the requested hold period. If the user's goal is to minimize after-tax interest, the system will select the loan with the lowest present value amount for interest, closing costs and mortgage insurance (where relevant) combined. In the case where refinancing a loan is being considered, the new loan must offer savings over the current loan.

Application at page 17.

The application for the system further expresses the preferred loan options which may be considered for the requested loan depending on the various criteria input by the user. Application pages 18-22 thus include potential loan types which may be considered by the system in formulating the recommendations made by the system. Furthermore, the Application not only discloses various loan types which may be considered, the Application sets forth algorithms employed by the system to evaluate which loan option comports best with the user's inputs. "The algorithms used by the loan advising system of the present invention discern the type of loan the user is seeking and then applies a distinct algorithm for that loan purpose".

Application at page 23.

As an example of how this invention fully evaluates inputs and factors for purposes of presenting optimal loan options, the system allows for the consideration of variables such as the prime interest rate. Thus, whereas home equity loans generally have long period fixed rates, the same is not true for other potential loan options. Thus:

Home equity **lines of credit** [emphasis added] are typically based on an index such as the prime rate. Since the prime rate is a variable rate, it will have to be forecast into the future so the line of credit interest rate can be forecast. The present invention uses the current treasury yield curve and adds an adjustment figure, such as 3.0%, as a margin to the treasury yield curve to derive a prime rate yield curve. The prime rate yield curve is then adjusted by the chosen margin to determine the line of credit interest rate. The following calculation applies to all home equity products including lines of credit and fixed loans.

Application at p. 24.

Accordingly, the instant application provides for a system of making loan recommendations enabled by a series of algorithms and a taxonomy of loan types that the system can consider to evaluate the needs and resources of a loan customer. These features, among others serve to distinguish the instant application from other prior art systems.

Kunzel US Patent Application 2002/0023051

Notwithstanding that these features distinguish the instant application, the Examiner has rejected the instant application as being anticipated under s. 102(b) by U.S. patent application, publication # 2002/0023051 to Kunzle ("Kunzle"). A review of Kunzle, however, reveals that in essence, the program does not perform any similar evaluation and advice function as does this invention. In essence, Kunzle claims "[a] system and method for enabling a customer to apply for a plurality of financial products simultaneously". Abstract from Kunzle. Kunzle does allow a user to input preferences for loan duration and whether a borrower would like to make minimal monthly payments as with a credit card. Kunzle at p. 2, ¶25. However, the inputs from the user and other data that the system will consider, apart from specific loan underwriting guidelines, are limited to those. And the system may return information concerning fees associated with a loan. Kunzle at p. 2, ¶26. However, while Kunzle may return such information, there is no disclosure in Kunzle suggesting that such fees are considered in formulating loan recommendations.

Nor is there any disclosure in Kunzle enabling that invention to perform any real evaluation of loan options outside the narrow scope identified above. Thus, the system provides no disclosure for taking into account variable interest rates and the affect those might have on long term loan options let alone any disclosure for forecasting long term rates. Nor is there any disclosure in Kunzle that allows that system to factor in desired rates of return where, for example, a loan is being secured to purchase an investment property. In contrast, not only does the instant application allow such functionality, even more it allows for comparison of such investment against historical stock market returns. Indeed, although Kunzle allows for the input of certain information, i.e. Kunzle at p. 3, ¶30, there is no disclosure as to how this information may be used by the system to recommend various loan products. By way of simple example, there is no mechanism in Kunzle allowing for projection of interests rates (indeed there is only a potential query as to “whether customer believes interest rates are going to increase or decrease”, Kunzle at p. 3, ¶30) or allowing the system to evaluate a potential investment property against a potential return on investment in the stock market. Instead, the list of customer inputs for Kunzle appears only to relate to the real crux of Kunzle, a method of filling out multiple loan applications.

Indeed, the Kunzle application discloses virtually nothing about the system’s purported ability to make loan recommendations. Thus, although the application recites:

FIG. 4 illustrates a system 400 for recommending one or more financial products to a customer in accordance with one embodiment of the invention...According to a preferred embodiment of the invention, a customer accesses the web site of a financial institution ...and is presented with graphic user interface or view’ [sic] enabling the customer to apply for one or more financial products offered by the financial simultaneously... System 400 may also include a determining module 404. Determining module 404 may be used to determine the financial products available to the customer based on the application. If determining module 404

determines that one or more financial products are available to the customer, recommending module 406 may be used to recommend those financial products to the customer.

Kunzle at p. 6, ¶¶ 52-54 and also Kunzle at p. 3, ¶30 it is clear that what Kunzle calls “recommending” in fact merely recite those loans for which the customer may qualify. Conversely, the instant application makes actual loan recommendations based on the needs and intentions of the borrower.

The limitations of Kunzle are further buttressed by Kunzle’s failure’s to identify the particular algorithms which his program may use to carry out not only its functions but any ability to generate specific loan recommendations based on the criteria.

Furthermore, nothing in Kunzle allows the system to factor tax consequences of loans or to adjust loan recommendations accordingly. Conversely the instant system even takes into account the state where the property lies and thus provides a nuanced consideration of the tax impact of loan recommendations. In short, the system according to the instant invention provides genuine recommendations to borrowers based upon a myriad of loan criteria, where Kunzle does not. Kunzle, rather than preparing any analysis and recommendation based on detailed criteria basically just allows a user to supply particular information which is used to complete multiple loan applications at simultaneously, determine what loans are available to a borrower, and to convey those loans to the user. There is virtually nothing in the disclosure that allows for the consideration of user specific recommendations based on user specific criteria. The only exception appears to be that the user may select a longer or shorter repayment term or apply for a credit card that allows for minimum payments.

Anticipation/Obviousness

Notwithstanding the differences highlighted above, the Examiner has rejected this application on grounds that the claims are anticipated by Kunzle or are obvious in light of standard financial information or techniques. To serve as an anticipating reference, however, the reference must enable that which it is asserted to anticipate. "A claimed invention cannot be anticipated by a prior art reference if the allegedly anticipatory disclosures cited as prior art are not enabled." See e.g. *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1354, 65 USPQ2d 1385, 1416 (Fed. Cir. 2003).

Here, while the Examiner asserts that Kunzle anticipates the Application because it purports to make loan recommendations, a close reading of Kunzle does not support that rejection. As detailed above, upon reading Kunzle it is clear that while Kunzle does appear to disclose a system capable of filling out multiple loan application at a single time and determining whether a loan applicant may qualify for a particular loan product, the application does not in fact disclose a method of recommending particular loan options to potential borrowers based on the purposes disclosed by the applicant. That is precisely what the instant application does. See e.g. Claim 1 ("...recommending loans for the user based upon the user-selected loan purpose"); Claim 20 ("...recommending loans for each of the one or more users based upon the user-selected purpose"); and Claim 35 ("...recommending loans for the user based upon the user-selected loan purpose").

Instead, it appears that at most, Kunzle discloses a system whereby a user can apply for multiple financial packages offered by a lender simultaneously, and those results will be returned to the applicant for selection. While the user may select such options as loan duration, the

system does not provide for, nor does it enable an actual recommendation based on loan purpose and criteria set by the user. Notwithstanding Examiner's rejection, and the fact that the Application uses the term "recommendation," there is simply no disclosure to support the detailed recommendation process set forth in this application.

Kunzle's Lack of Enablement Precludes a Finding of Anticipation

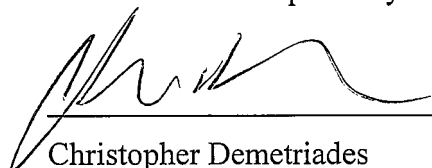
For the foregoing reasons, Applicants believe that independent Claims 1, 20 and 35 are patentable over Kunzle. Furthermore, dependent Claims 2 through 19, 20 through 34 and 35 through 53 recite additional limitations which, in conformity with the features of their corresponding independent claim, are not disclosed or suggested by the art of record. The dependent claims are therefore believed patentable. However, the individual reconsideration of the patentability of each claim on its own merits is respectfully requested.

For all of the above reasons, the Applicant believes that the Examiner's objections are not well founded and that Claims 1 through 53 should be allowed.

The Examiner is encouraged to telephone the undersigned to discuss any matter that would expedite allowance of the present application.

Respectfully submitted,

Date: June 16, 2008



Christopher Demetriades  
Reg. No.: 54,062  
Attorney for Applicant(s)  
Feldman Gale, P.A.  
One Biscayne Tower, 30<sup>th</sup> Floor  
2 South Biscayne Boulevard  
Miami, Florida 33131  
Customer No. 44338  
Tel: 305-358-5001  
Fax: 305-358-3309